



Agenda Date: 2/16/99

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

ENERGY

In the Matter of the Energy Master)
Plan Phase II Proceeding to)
Investigate the Future Structure of)
the Electric Power Industry -)
Enrollment/Billing Issues)

Decision & Order

Docket Nos. EX94120585Y, EO97070457,
EO97070460, EO97070463, EO97070466

(SERVICE LIST ATTACHED)

BY THE BOARD:

As a result of the enactment of the "Electric Discount and Energy Competition Act" ("Act") (P.L. 1999, c.23), and in order to meet the deadlines for retail competition prescribed in that Act, the Board of Public Utilities ("Board") herein addresses certain basic questions dealing with general enrollment and billing issues in order that the Technical Working Groups, previously established by this Board, may determine the business information flows necessary to implement electric competition. Pursuant to Section 37 of the Act, the Board will shortly be initiating a proceeding to adopt, after notice, opportunity for comment and public hearing, interim standards to prevent and establish penalties for the unauthorized change of a consumer's electric power supplier or gas supplier, a practice commonly known as "slamming". The issues addressed in this Order, however need to be resolved at this time in order to allow for the development of systems to accommodate retail choice by August 1, 1999.

Among the specific enrollment areas addressed herein are the method of enrollment, retention of enrollment authorization, customer verification and switching requirements. In addition, an outstanding billing issue before this Board is the allocation of partial payments.

These issues have been previously briefed by the parties. Customer enrollment, customer verification and switching issues were addressed as part of the restructuring hearings before Commissioner Armenti and were briefed by the parties at the conclusion of the hearings. Thereafter, at its regularly scheduled agenda meeting of October 21, 1998, the Board directed

that written comments be accepted through November 2, 1998 on the retention of customer switch authorizations and customer partial payments. The Board received comments on these issues from Atlantic Electric Company, the Division of the Ratepayer Advocate, GPU Energy, Mid-Atlantic Power Supply Association (MAPSA), New Energy Ventures (NEV), New Jersey Natural Gas Company, Pennsylvania Power & Light Company (PP&L), Public Service Electric & Gas Company (PSE&G) and Rockland Electric Company.

We note as a preliminary matter that methods of enrollment, the retention of customer authorizations and customer verification are related issues which need to be structured in a manner to avoid the possibility of "slamming". However, in deciding these issues, the Board recognizes that it also needs to balance its legitimate consumer protection concerns with respect to unauthorized switching with the reality that the more cumbersome the process the less likely it will be that residential and small commercial customers will choose to participate, or even be approached by marketers. A discussion of the individual issues follows below.

Customer Authorization for Enrollment

The Act states that: "A change in a customer's electric power supplier or gas supplier shall be deemed to be unauthorized unless the customer has done so affirmatively and voluntarily ...through a written signature or such alternative forms of verification as the board... may permit." (Section 37) The parties were split on this issue with some advocating that there be a requirement for a written customer signature ("wet signature") while others argued for other electronic verification methods. After careful consideration of the position of the parties, the Board is of the view that there should be a written customer authorization, at least at the outset of competition. While this method is not foolproof, it would appear to provide more certainty that the customer of record is the party actually requesting to enroll with an electric power supplier and would likely be less subject to abuse than a telemarketing or Internet enrollment process. We also do not believe that such a requirement would be unduly burdensome. As the Board gains experience with the competitive process and has data to evaluate concerning slamming in the electric industry, we will likely revisit this issue.

Retention of Customer Authorization

With the exception of PSE&G, all parties filing comments concerning the retention of customer authorizations, whether for an initial enrollment or a switch between third-party suppliers, agree that the third party supplier (TPS) should be responsible for retaining the original authorization and for producing it in the case of a dispute or to satisfy other Board requirements. PSE&G is indifferent as to which entity should be responsible for the authorization. PSE&G's main concern is that it be provided with a copy of the switch authorization in order to better address any customer inquiries which, appropriately or not, might be directed to it. The three other electric utilities do not indicate that they would require a similar copy for their records.

Most of the parties are of the opinion that having the TPS maintain and be responsible for producing the customer switch authorization would be the most efficient manner of dealing with this issue. The Board concurs that this appears to be a reasonable and practical approach. PSE&G's concern that it receive a copy of the customer's authorization is a utility specific concern that can be pursued as a proposed requirement in its TPS Supplier Agreement which will ultimately be subject to Board approval.

Consistent with our decision that the TPS be responsible for retaining and producing customer switch authorizations, the Board believes that the TPS should also then be responsible for initiating the business process for the switch. This initiation would take place via an electronic data interchange (EDI) request from the TPS to the utility, which would include basic customer information including the customer's account number. This would result in a permanent electronic record of the request, which the utility would produce in the event of a dispute. However, beyond that, the resolution of any switching disputes should, in the first instance, be between the supplier and the customer or, ultimately with the Board; not the utility.

Customer Confirmation

A second related issue which was addressed by a number of parties involves customer confirmation of switch requests. The utilities have all indicated their intention to notify customers when a request to switch suppliers has been received from a TPS. All utilities also intend to implement a negative confirmation process. That is, unless a customer responds within a prescribed period of time that he/she does not wish to switch suppliers, then the switch will occur.

GPU Energy, which strongly favors TPS retention of the switch authorization, points out that any confirmation process that requires the utility to maintain a hard copy of the confirmation, or verification, places a costly and administratively difficult burden on the utility and almost defeats the purpose of the TPS maintaining the authorization request. As an alternative, should the Board require a positive verification, GPU suggests a method which is commonly used today among financial institutions to activate a credit card. The process would be that the utility would send the aforementioned notice to the customer indicating that a TPS claims to be its new supplier. If the customer agrees, it would call an 800 number supplied by the LDC and enter a code, account number etc. to which only the customer should have access.

The Board believes that the requirements for a wet signature coupled with a negative confirmation process should be adopted initially and should serve as an adequate deterrent to slamming. The details of the negative confirmation process by a technical working group and will be addressed in a future Board Order. The Board has the authority, via the Act's anti-slamming and licensing provisions, to fine and/or suspend the licence of TPSs that fail to produce a customer's signature when required. The Board believes that this should serve as a sufficient deterrent to unauthorized switching and will result in an efficient and relatively complaint free enrollment process. As the Board gains experience with the energy market, it can and will modify these requirements toward a stricter or more lenient enrollment process as needed.

Switching Requirements

The Board believes that whether a customer switches from Basic Generation Service (BGS) to an electric power supplier or switches from one electric power supplier to another, the process should be the same. Thus, any change in suppliers will require a "wet" signature. The new supplier shall initiate the change with the utility and be responsible for retaining the customer authorization, while the utility sends a verification notice to the customer and the customer shall have a set time to cancel the switch. Again here, the details of the process are still under consideration by a working group and will be considered in a future Board Order.

Partial Payments

Although the Act provides that TPSs may bill directly for their services, this does not completely eliminate the partial payment issue as some marketers, possibly for economic reasons, may still choose to have the utility do all the billing. Comments on the partial payment issue fall into three categories. The utilities generally believe that the utility portion of the bill should be paid first. They argue that TPSs, through their contractual relationship with the customer, will likely have the ability to terminate supply service for prolonged non-payment (at which point the customer would revert to basic generation service), whereas the utility must operate within the Board's regulations and does not have the same flexibility. Furthermore, since the utilities are the only entities that can discontinue a customer's electric service, they argue that it is necessary to have the utility portion of the bill as current as possible. The payment posting sequence, as proposed by PSE&G, for example, is as follows:

- 1) customer arrears owed to the utility;
- 2) customer arrears owed the TPS;
- 3) the utility's current charges.
- 4) the TPS's current charges

Some marketers argue that the customer payment should be pro rated between the utility and the marketer. Others, including the Mid-Atlantic Power Supply Association and Pennsylvania Power & Light, point to the settlement agreements in Pennsylvania, and urge the Board to have the utility purchase the TPS receivables, thus eliminating this issue as well as potential future issues with uncollectibles.

The Division of the Ratepayer Advocate agrees with the utility approach that partial payments be applied first to regulated charges, to ensure that the customer's payment be applied first to those items for which electric service can be disconnected if not paid. The RPA reasons that TPSs have the tools available in the competitive market to collect their unpaid bills, and can cancel their contracts for customers' failures to adhere to payment terms. The RPA also notes that in most other states with adopted electric restructuring rules, partial payments will be allocated to the stranded cost or market transition charges first, then to regulated distribution charges

followed by any supplier or competitive charges.

Prior to the passage of legislation, the partial payment question was significant to all TPSs. However, since the legislation allows marketers to bill directly for their services, fewer marketers will be directly affected by this issue.

Each of the three proposed methodologies has drawbacks, however the added flexibility provided the marketer through the legislation leads this Board to conclude that the utility methodology, as exemplified by the PSE&G posting sequence above, should be accepted and implemented for those TPSs who choose to have the utility bill for them. Furthermore, the above PSE&G sequence for allocating payments is consistent with the methodology recently adopted by this Board for the telephone industry. If third-party suppliers find this approach to be cumbersome or unworkable, they have the option, as a result of the legislation, to develop or contract for their own billing systems.

As with other issues in this Order, the subject of partial payments will likely be an evolving process, subject to future Board review.

Based upon a review of the record in these proceedings, the Board **HEREBY FINDS** that:

- (1) There needs to be a balance struck between concerns with slamming against the reality that the more cumbersome the process the less likely it will be that residential and small commercial customers will choose to participate, or even be approached by marketers;
- (2) For the beginning of competition a "wet" signature provides an added level of security and comfort both from a regulatory perspective and from the customer's point of view;
- (3) The Board's position on this issue will be reevaluated as experience with the competitive process is gained and data for evaluation is available;
- (4) The third-party supplier should be responsible for retaining the original authorization and producing it in case of a dispute;
- (5) PSE&G may pursue its position of requiring a copy of the "wet" signature as a proposed requirement in its TPS Supplier Agreement which will ultimately be subject to Board approval;
- (6) The TPS shall be responsible for initiating the business process for the switch;
- (7) The initiation of the switch shall take place via an electronic data interchange (EDI) request from the TPS to the utility, which would include basic customer information including the account number;

- (8) The EDI will result in a permanent electronic record of the request which the utility shall produce in the event of a dispute;
- (9) For the beginning of competition a negative confirmation process is reasonable;
- (10) For the beginning of competition, a wet signature coupled with a negative confirmation process is a reasonable deterrent to slamming;
- (11) The Board has the authority, via the Act's anti-slamming and licensing provisions, to fine and/or suspend the licence of TPSs that fail to produce a customer's signature when required;
- (12) Pursuant to Section 37 of the Act, the Board will shortly initiate a process to develop interim standards to prevent and to establish penalties for slamming;
- (13) As the Board gains experience with the competitive energy market, it may modify the enrollment process requirements in a stricter or more lenient fashion;
- (14) A uniform switching process for all four utilities is appropriate and will result in fewer operational differences among the utilities;
- (15) Each of the three proposed partial payment methodologies has its advantages and drawbacks;
- (16) In the case of partial payments involving utility billing, having customer arrears owed to the utility posted first, customer arrears owed TPS next, then the utilities' current charges and the TPS current charges last, is reasonable in light of the provisions in the Act which allow TPSs to bill directly for their services;
- (17) The aforementioned sequence for allocating payments is consistent with the methodology recently adopted by the Board for the telephone industry;

Based upon the above, the Board **HEREBY ORDERS** that:

- (1) Third Party Suppliers shall obtain a wet signature to enroll a customer with an energy supplier,
- (2) TPSs shall retain and be responsible for producing the "wet signature" as may become necessary;
- (3) TPSs, as the party receiving the initial wet signature, shall be responsible for initiating the EDI transaction with the utility.

- (4) Utilities shall be permitted to employ a negative customer confirmation process, the details of which are to be further developed;
- (5) The process to switch between suppliers shall be the same as the initial enrollment process;
- (6) In the case of partial payments involving utility billing, customer arrears owed to the utility will be posted first, customer arrears owed TPS next, then the utilities' current charges and the TPS current charges last.

DATED: 3/17/99

BOARD OF PUBLIC UTILITIES
BY:

____SIGNED_____
HERBERT H. TATE
PRESIDENT

____SIGNED_____
CARMEN J. ARMENTI
COMMISSIONER

ATTEST: ____SIGNED_____
MARK W. MUSSER
SECRETARY